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No. 96-1499
In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

C.O.N.T.R.O.L.; Cities of Argyle, Haslet, Justin, and Roanoke; Towns of Bartonville, Copper Canyon, and Northlake; Argyle and Northwest Independent School Districts; Argyle and Justin Volunteer Fire Departments; Denton County Electric Co-op; Graham-Argyle and Prairie Mound Cemetery Associations; Justin State Bank; Northwest Regional Airport; Lil Arnold; Rebecca R. Blair; Eric C. Carpenter; Edward H. Coe; David M. Dooley; Bert H. Gibbs; Gibbs Family: Tillie H. Gibbs, H. Jarrell Gibbs and Diane (Gibbs) Nichols; C. J. Hardeman Family; Elizabeth C. Morris; William D. Owens, Jr.; Daniel J. Schneider Family; Roger Thompson; Kay Thompson; Lois Thompson; Robert Tracy; Donald A. Wood; G.A.S.P.; and Carter-Walsh Thoroughbred Farm,
Petitioners,

vs.

Kathy Nielsen, Sentry Environmental, L.P., & Texas Natural Resource Conservation Commission,
Respondents.

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On Petition for a Writ of Certiorari from the Supreme Court of the State of Texas

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KATHY NIELSEN'S RESPONSE IN SUPPORT

Kathy Nielsen,
Respondent
1029 Joyce St.
Roanoke, TX 76262
T & F: (817) 430-1342

QUESTIONS PRESENTED

Adopted herein as though re-written in full as presented in the Petition for Writ of Certiorari.

CITATIONS OF THIS CASE

Adopted herein as though re-written in full as presented in the Petition for Writ of Certiorari.

BASIS FOR JURISDICTION

Adopted herein as though re-written in full as presented in the Petition for Writ of Certiorari.

CONSTITUTIONAL AND OTHER PROVISIONS

Adopted herein as though re-written in full as presented in the Petition for Writ of Certiorari AND in addition:

United States Constitution, Preamble:

> "We, the people of the United States, in Order to....promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

United States Constitution, Article XIV, Section 1:

> "...No State shall make or enforce any law which shall abridge the privileges ...of citizens of the United States..."

STATEMENT OF THE CASE

Adopted herein as though re-written in full as presented in the Petition for Writ of Certiorari.

ARGUMENT

Adopted herein as though re-written in full as presented in the Petition for Writ of Certiorari; AND, as follows:

An expert from the FAA testified before the TNRCC, supporting the FAA regulations which do not need supporting as law is clearly law. This FAA testimony was erroneously dismissed as NOT relevant by TNRCC. FAA Order 5200.5A is not a 'new' regulation. FAA Order 5200.5A is written in simple, clear English. FAA Order 5200.5A is clearly applicable in this situation as the airport is well within the 5 mile radius specified in the law. FAA Order 5200.5A was erroneously dismissed as in-applicable by the TNRCC.

Clearly the TNRCC believes itself to be sacrosanct and that it does not need to conform to the Orders and regulations of our National agencies.

In addition to being without legal precedent nor justification, this wanton dismissal of FAA testimony and FAA Orders by the TNRCC places Kathy Nielsen's personal well being in jeopardy as Kathy Nielsen lives in the housing community which surrounds and is within 1 mile of the airport in question. Any substantially increased likelihood of bird strikes at this airport means a substantially increased likelihood that a plane will crash on either her person or her property, very likely injuring both severely.

Kathy Nielsen argues that her very safety and well-being are protected under the Constitution of the United States, and TNRCC's violation of the FAA Orders, specifically FAA Order 5200.5A, will violate these Constitutional Protections. The increased potential hazard caused by permitting landfills to be within 5 miles of an airport is a legally recognized jeopardy as per the FAA Orders.

This housing community in which Kathy Nielsen lives is also directly under the path taken

by airplanes when using the Northwest approach or ascent pattern en route to the Dallas-Fort Worth International Airport. Large jets very often fly very low along this corridor. The TNRCC's dismissal of the wisdom behind and legality of the FAA Orders also directly subjects hundreds of unwitting passengers on major airlines flying to and from the Dallas-Fort Worth International Airport to a substantially increased risk of danger, again due to the increased risk of bird strikes.

TNRCC's purposeful intent to disregard the FAA Orders and wisdom indicates that the TNRCC finds it perfectly acceptable that they place citizens, including Kathy Nielsen, and pilots into situations of grave peril and this is all done unnecessarily. TNRCC has no *need* to place all these people into peril as Texas still has many other sites where a landfill could be placed without jeopardizing the health, safety and well-being of others.

The precedent set, if the Supreme Court of the United States permits the TNRCC to ignore FAA Order 5200.5A, will allow any state agency or any citizen to legally, yet, arbitrarily, ignore any specific Federal regulation, according to the arguments of its of his own personal desires.

CONCLUSION

The Petitioners Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Kathy Nielsen

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APPENDIX

Herein adopted as though re-written in full as presented the Petition for Writ of Certiorari.